December 17, 2010

TO: MTCA/SMS Rule Advisory Committee
FROM: Pete Kmet, P.E.
SUBJECT: MTCA Rule Amendment Status Report

Since the last advisory committee meeting, Ecology staff have been working diligently on proposed changes to the MTCA rule. Below is a brief summary of the major categories of proposed changes. Many of these proposals have been discussed at previous meetings. The actual rule language is in final preparation and will be posted on Ecology's rule-making website in the next few weeks with an opportunity for comment provided. No further work on these changes is anticipated until the rule moratorium is lifted.

Sediment-related revisions to establish clear policies and align MTCA and SMS requirements

- Several minor revisions have been made better integrating protection of sediments as part of setting cleanup standards for other media. However, most revisions are expected to be in the sediment rule. Once the sediment rule is revised and the moratorium lifted, additional revisions will be made as necessary.

Updating cleanup standards to reflect new scientific information

- Revisions to toxicological hierarchy in Section 708 to reflect EPA 2003 guidance
- Revisions to Section 708 and cleanup level equations to require application of EPA early life stage guidance when establishing cleanup standards. Carcinogenic PAHs would be treated as individual chemicals.
- Lead models (IEUBK, Adult Lead Model) recognized and parameters for use established.
- Work on vapor intrusion will continue with subcommittee via vapor guidance. Several issues yet to be resolved including: protectiveness of Methods A & B; interim action levels; reliability and use of modeling; methods for demonstrating compliance; how to factor in background when determining compliance.
- Work on fish consumption rates will continue as part of SMS rulemaking process.
- Direct contact equations revised to include both soil ingestion and dermal contact for all substances.
- Several revisions to Method A table values reflecting policy changes plus changes in toxicity values since 2001.
- Toxicity reference values and TEE screening level concentrations updated for several substances based on latest Oak Ridge database.

Revisions incorporating new statutory requirements

- Changes throughout the rule reflecting various laws including the Uniform Environmental Covenants Act, changes under the Voluntary Cleanup Program, changes in terminology and cross-references, the addition of geologist licensing. Also changes eliminating Regional Citizen Advisory Committees, the Science Advisory Board (SAB) and biennial report.

Revisions addressing implementation concerns identified since the 2001 MTCA rule amendment

- Modification to RI/FS and remedy selection sections to clarify requirements and better integrate TEE and VI provisions. Changes have been scaled back substantially based on comments.
- Dividing cleanup standards sections into a series of smaller sections to improve readability and consideration of all relevant pathways.
- Expanded applicability of Method A. Combined Standard and Modified Methods B/C to reduce rule size and complexity while maintaining existing flexibility.
- Clarifying requirements and adding timelines for the investigation and cleanup of leaking underground storage tanks. (may be moved to UST rule).
- Financial assurance--specific performance standards added for the various financial instruments based on RCRA.
- Changes throughout the rule reflecting current practice for reporting and listing of sites, use of e-mail for notices, property access, public involvement procedures, handling of non-detects, submittal requirements, and analytical methods.
- Groundwater issues—use of filtering, demonstrating compliance using direct comparison methods, point of compliance for groundwater discharging to surface water and considerations when monitoring for compliance in these situations.
- Major reorganization to TEE Sections and incorporation of consideration of "especially valuable habitat" when determining appropriate remedy addressing TEE contamination.